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February 22, 2018

**VIA U.S. MAIL**

Regional Freedom of Information Officer  
U.S. EPA, Region 4  
Atlanta Federal Center Building  
61 Forsyth Street, S.W., 9<sup>th</sup> Floor  
Atlanta, GA 30303-8960

Re: Freedom of Information Act Request

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the United States Environmental Protection Agency's (the "Agency" or "EPA") FOIA regulations, 40 C.F.R. Part 2, the undersigned hereby requests copies, or reasonable access for the purposes of inspection and copying, of all documents and information received or otherwise under the control of the EPA as outlined below.

For purposes of these requests, "document" refers to any electronic, written, graphic, video, or audio matter, however produced or reproduced, whether draft or final versions, and including but not limited to correspondence, e-mails, notes, interoffice communications, reports, memoranda, minutes, summaries, telephone records, telephone message logs or slips, PowerPoint presentations, meeting agendas, transcripts, call lists, spreadsheets, maps, photographs, data compilations, indices, privilege logs, or calendars.

In responding to these requests, EPA's search should encompass, but should not be limited to: (a) documents sent to or from e-mail addresses used by current or former EPA employees and representatives, regardless of whether such addresses are private or secondary addresses of official addresses; (b) documents generated for any meeting which EPA participated or conducted, including agendas, spreadsheets, PowerPoint presentations, and notes; and (c) documents relating to or evidencing presentations made by any party to agencies or entities other than EPA.

If a requested document is not in your possession, custody, control, or otherwise not accessible by you, but you are aware or have reason to believe that such documents exist, please let us know what entity or party you understand to be in possession, custody, or control of such documents and/or where such document might be located.

I request EPA to produce the following records:

**A. General Request:**

1. All documents and correspondence, including but not limited to any internal policies, guidance, or memoranda as well as any formal or informal guidance, interpreting or applying the term “known to the administrator.”
2. All documents and correspondence, including but not limited to any internal policies, guidance, or memoranda, concerning the North Carolina Environmental Management Commission’s revision of the designation of thirteen segments of the Cape Fear River basin from Class C to Class Water Supply (WS) IV and the EPA’s related determination that the revision is consistent with federal water quality standards and the Clean Water Act.

**B. TSCA Requests:**

3. All documents and correspondence, including but not limited to any internal policies, guidance, or memoranda, concerning, interpreting, or applying 40 CFR § 720.3(d), which defines “Byproduct” as a “chemical substance produced without a separate commercial intent during the manufacture, processing, use or disposal of another chemical substance or mixture.”
4. All documents and correspondence, including but not limited to any internal policies, guidance, or memoranda, concerning the legal importance or effect of the language included in the “Preamble” section of any TSCA Consent Order between the EPA and any other party.
5. All documents and correspondence, including but not limited to any internal policies, guidance, or memoranda, concerning, interpreting, or applying 40 CFR § 720.30(h), which sets forth certain substances which are not subject to Pre-manufacture Notification requirements under the Toxic Substances Control Act.
6. All documents and correspondence, including but not limited to any internal policies, guidance, or memoranda, concerning, interpreting or applying the requirements the Environmental Protection Agency imposes on chemical manufacturers to capture, destroy, recycle, monitor, or report effluent or emissions of certain chemicals.

**C. Permit Shield Requests:**

7. All documents and correspondence concerning EPA Guidance issued in 1994 and amended in 1995 entitled “*Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits*” (the “Permit Shield Guidance”). This request includes but is not limited to documents and communications concerning interpretation and applicability of the Permit Shield.
8. All documents and correspondence concerning EPA Guidance issued in 1976 concerning the scope of the so-called “Permit Shield,” specifically the



Memorandum from Jeffrey G. Miller, Deputy Assistant Administrator for Water Enforcement to Regional Enforcement Director, Region V (Apr. 28, 1976) which states that it is “impossible to identify and rationally limit every chemical or compound” in discharges. This request includes but is not limited to documents and communications concerning interpretation and applicability of the Permit Shield.

**D. FOIA Exemptions**

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information to appeal the denial. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F). To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, addressees and recipients, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for the denial, including identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions, identify and describe the withheld portions, specify the applicable exemption, and provide the remainder of the record. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(F), (b).

**E. Timing and Mechanics of Production**

I request that in responding to this letter, EPA comply with all relevant deadlines and other obligations set forth in FOIA and EPA’s regulations, and I look forward to receiving your response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104(a). Please produce records on a rolling basis; the search for—and deliberation concerning—certain documents should not delay the production of others that the EPA has already retrieved and could turn over. Please note that McGuireWoods is interested in working with the EPA to ensure that the burden associated with this FOIA request is minimized to the extent practicable, including discussing phased or prioritized document productions.

I prefer to receive electronic documents, and not paper copies, whenever possible. To the extent possible, I request that EPA provide the requested information in searchable, electronic format on CD, DVD, or external hard drives of sufficient size to contain the production. Electronic files should be provided in their original format, not in PDF containers. Individual e-mails, and their attachments, should be maintained as single MSG files. If this is not possible, then e-mails and their attachments should be provided in either PST or NSF containers, thereby preserving all attachments information.

I understand that there may be fees and costs associated with this request, and I agree to pay any fees or costs up to \$1000.00 associated with making these materials available to

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us. If the costs will be in excess of \$1000.00, please contact my paralegal, Sonna Greene, in my office ([sjgreene@mcguirewoods.com](mailto:sjgreene@mcguirewoods.com) or 919.755.6672) or me at the number provided above before such costs are incurred.

In responding to the present letter, please mail copies of all requested documents, indices and logs, and any invoice for reasonable FOIA fees to the undersigned.

Thank you for your assistance.

Very truly yours,



Charles D. Case

cc: National Freedom of Information Officer  
U.S. EPA  
Regional Freedom of Information Officer  
U.S. EPA, Region 2  
Regional Freedom of Information Officer  
U.S. EPA, Region 3  
Regional Freedom of Information Officer  
U.S. EPA, Region 5